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Before the
Federal Communications Commission
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Complete Detariffing for
Competitive Access Providers and
Competitive Local Exchange Carriers

CC Docket No. 97-146

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To: The Commission

REPLY COMMENTS OF HYPERION TELECOMMUNICATIONS, INC.

Hyperion Telecommunications, Inc. ("Hyperion"), by its attorneys, hereby submits its reply comments regarding issues raised by the Commission's Notice of Proposed Rulemaking with respect to the tariff filing obligations of nondominant providers of interstate exchange access services.^{1/}

The overwhelming majority of commenters in this proceeding support a policy of permissive detariffing. Large interexchange providers, wireline and wireless competitive local exchange carriers ("CLECs") and competitive access providers ("CAPs") and an incumbent LEC

^{1/} See *In the Matter of Complete Detariffing for Competitive Access Providers and Competitive Local Exchange Carriers*, Memorandum Opinion and Order and Notice of Proposed Rulemaking, CCB/CPD Nos. 96-3; 96-7; CC Docket No. 97-146; FCC 97-219 (released June 19, 1997) (hereafter "Order" or "Notice"). Publication of the Commission's Notice of Proposed Rulemaking occurred on July 17, 1997. Comments were filed in this proceeding on August 18, 1997; reply comments were due thirty days after comments. Thus, these comments are timely filed.

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have all demonstrated the cost effectiveness of providing exchange access services on a tarified basis. The Commission should accept these views of the commenting parties and adopt a policy of permissive detariffing for nondominant providers of interstate exchange access services.

I. THE COMMENTS OVERWHELMINGLY SUPPORT A POLICY OF PERMISSIVE DETARIFFING FOR NONDOMINANT PROVIDERS OF INTERSTATE EXCHANGE ACCESS SERVICES

The Commission can have no doubts concerning the industry's broad support for permissive detariffing because this is the second time that the Commission has been confronted with a record that demonstrates significant support for permissive detariffing.^{2/} In this proceeding, both MCI and AT&T unequivocally support a policy of permissive detariffing because of the efficiency gains and the lack of any harmful effects associated with providing service on a tarified basis.^{3/} These carriers are the largest purchasers of interstate exchange access and presumably, the carriers who would be most disadvantaged by any putative anticompetitive conduct associated with tariffing services by their CLEC and CAP access suppliers. Yet both AT&T and MCI favor establishing their relationships with interstate access providers on a tarified basis because they recognize providing this service via tariff is the most efficient method of obtaining service. By eliminating the administrative costs of single-

^{2/} A wide consensus of comments in the Commission's interexchange forbearance proceeding favor permissive detariffing. See Comments of Sprint at 7; Comments of AT&T at 13; Comments of MCI at 14; Comments of PacTel at 5; Comments of MFS at 4; Comments of GTE at 7.

^{3/} See Comments of MCI at 9; Comments of AT&T 2 (incorporating AT&T's Comments filed in CC Docket No. 96-61).

customer contracts, purchasers of interstate access are able to acquire service for less cost and providers of interstate access are more able to put price pressure on comparable incumbent LEC services. There is nothing in the record in this proceeding to establish that the procompetitive effects of the Commission's permissive detariffing policy are outweighed or even matched by whatever speculative benefits are associated with a policy of mandatory detariffing.

Wireline and wireless new entrants also support a policy of permissive detariffing for nondominant providers of interstate exchange access.^{4/} These carriers provide further support for Hyperion's position that a policy of mandatory detariffing will impose significant administrative costs on precisely the carriers who are least able to bear them. As nondominant CAPs grow and expand the geographic scope of their service offerings, tariffs will provide a more efficient mechanism for dealing with a variety of customers. A policy of permissive detariffing allows carriers to decide what mix of contract and tariff service arrangements best serve the needs of access consumers.

II. THERE IS LITTLE OPPOSITION TO PERMISSIVE DETARIFFING AND NO PUBLIC INTEREST JUSTIFICATION TO SUPPORT A POLICY OF MANDATORY DETARIFFING

Those few parties opposing permissive detariffing argue that nondominant carriers will engage in unreasonable behavior by abrogating long-term contracts without informing their customers of tariff changes or that the uncertainty surrounding the Commission's authority

^{4/} See Comments of Winstar Communications, Inc. at pages 2-3; Comments of GST Telecom, Inc. at page 2; See Comments of RCN Telecom Services, Inc. at page 4.

to order mandatory detariffing somehow affects its authority to order permissive detariffing.^{5/} First, the Commission's Order adopting a policy of mandatory detariffing for interstate interexchange services has been stayed by the D.C. Circuit.^{6/} The stay of the Commission's Order suggests there is a likelihood of success on the merits. This doubt about the Commission's authority to order mandatory detariffing for interstate interexchange services does not apply to interstate exchange access tariffs filed on a permissive basis. Second, concerns that CLECs will abrogate long-term contracts unfairly are unrealistic. Nondominant CLECs do not possess market power that would allow them to engage in this kind of anticompetitive behavior. Moreover, alternative suppliers are plentiful. In addition, nothing in the application of permissive detariffing precludes the Commission from entertaining Section 208 complaints to address unreasonable carrier practices should they occur.

Finally, USTA and SBC argue that nondominant and dominant providers of interstate exchange access services should be treated identically.^{7/} Hyperion is not similarly situated to SBC in its provision of exchange access because Hyperion lacks market power. Further, Hyperion is arguing that the Commission not *disadvantage* nondominant providers of interstate exchange access by requiring them to cancel their tariffs. The Commission should not impose new administrative costs on CLECs which ILECs need not incur and have the resources to bear them in any event.

^{5/} See Comments of Ad Hoc Telecommunications Users Committee at page 9.

^{6/} *MCI Telecommunications Corp. v. FCC*, No. 96-1459 (D.C. Cir. Feb 13, 1997).

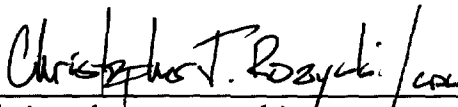
^{7/} See Comments of USTA at 2-3; Comments of SBC Communications, Inc. at page 2.

III. CONCLUSION

This rulemaking presents CLECs with a stark choice. Hyperion can devote its administrative resources to bringing competition to exchange access services, or it can expend those resources on renegotiating the same deal with hundreds of customers once the Commission imposes a policy of mandatory detariffing. The latter prospect is not in the public interest. Hyperion respectfully requests that the Commission endorse the position of a majority of the commenting parties, and institute a policy of permissive detariffing for nondominant providers of interstate exchange access services.

Respectfully submitted,

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